

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CORNELL MORROW,

No. C 10-03962 CW (PR)

Petitioner,

ORDER OF DISMISSAL

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Petitioner, a state prisoner, filed the present petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He states that his appeal is still pending before the state appellate court.

(Pet. at 3, 5.)

The exhaustion requirement applicable to federal habeas petitions is not satisfied if there is a pending post-conviction proceeding in state court. See 28 U.S.C. § 2254(b)-(c); Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-conviction challenge to a criminal conviction is pending in state court, a potential federal habeas petitioner must await the outcome of the challenge before his state remedies are considered exhausted. See id. Moreover, the rule in Sherwood applies whether

1 or not the issue raised in the pending state petition is included
2 in the federal petition, see id., for the reason that a pending
3 state court challenge may result in the reversal of the
4 petitioner's conviction, thereby mooted the federal petition. See
5 id. (citations omitted).

6 As Petitioner has a pending post-conviction proceeding in
7 state court, the instant petition for a writ of habeas corpus is
8 DISMISSED without prejudice to refile once all state court post-
9 conviction challenges to Petitioner's conviction have been
10 completed, and all claims Petitioner wishes to raise in federal
11 court have been presented to the Supreme Court of California. See
12 28 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455 U.S. 509, 522 (1982)
13 (holding every claim raised in federal habeas petition must be
14 exhausted).

15 Petitioner's "Motion for a Request to Stay State Court
16 Proceedings" (docket no. 4) is DENIED.

17 The Clerk of the Court shall enter judgment, terminate all
18 pending motions and close the file.

19 IT IS SO ORDERED.

20
21 Dated: 10/6/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CORNELL MORROW,

Plaintiff,

v.

PEOPLE OF THE STATE OF CALIF et al,

Defendant.

Case Number: CV10-03962 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 6, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Cornell Morrow G53093
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127

Dated: October 6, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California